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13 CONCORD POLICE ASSOCIATION

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF CONTRA COSTA**

16 CONCORD POLICE ASSOCIATION

17 Petitioner/Plaintiff,

18 vs.

19 CITY OF CONCORD; GUY SWANGER,  
20 Chief of Police; and DOES 1 through 20,  
21 inclusive,

22 Respondents/Defendants.

CASE NO.:

**N 19 - 0 1 6 6**

**VERIFIED PETITION FOR WRIT OF  
TRADITIONAL MANDATE [CCP § 1085];  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

23 **FIRST CAUSE OF ACTION - PETITION FOR WRIT OF TRADITIONAL MANDATE**

24 1. For a First Cause of Action by Petitioner/Plaintiff Concord Police Association  
25 ("Petitioner" or "CPOA") against Respondents/Defendants, City of Concord ("City"); Guy Swanger,  
26 Chief of Police ("Chief"); and Does 1 through 20, inclusive (collectively, "Respondents"), for a  
27 Petition for Peremptory Writ of Mandate pursuant to Code of Civil Procedure section 1085, Petitioner  
alleges as follows:

28 2. CPOA was and is the employee organization as defined in Government Code section

**FILED**

**2019 JAN 24 A 11:10**

KATE BIEKER  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

BY: A. GRAHAM, DEPUTY CLERK

PER LOCAL RULE, THIS  
CASE IS ASSIGNED TO  
DEPT. 5, FOR ALL  
PURPOSES.

SUMMONS ISSUED

1 3500 et seq., recognized by the City as the exclusive representative of Police Officers and Police  
2 Sergeants employed by the City with regard to all matters relating to employment conditions and  
3 employer-employee relations. (Gov. Code § 3504.) Petitioner's sworn members are peace officers as  
4 defined by Penal Code section 830.1.

5 3. At all times mentioned herein, the City was organized and operating under the laws of  
6 the State of California and was a local employing agency within the meaning of Penal Code section  
7 832.5 et seq. maintaining peace officer personnel information, as well a local agency within the  
8 meaning of Government Code section 6252, a part of the California Public Records Act (Gov. Code §  
9 6250 et seq. ("CPRA").)

10 4. At all times mentioned herein, the Chief was charged with the general supervision,  
11 administration, management, and operations of the Concord Police Department ("Department"). The  
12 Chief is named as a Respondent/Defendant in his official capacity only.

13 5. Venue of this case is within the jurisdiction of this Court as the performance required of  
14 the Respondents/Defendants, and business of the Respondents/Defendants, is located within the  
15 County of Contra Costa.

16 6. At all times mentioned herein, Respondents/Defendants Does 1 through 20, inclusive,  
17 were the agents, servants and employees of Respondents/Defendants, and in doing the things  
18 hereinafter alleged were acting within the scope of their authority as such agents, servants and  
19 employees with the permission and consent of Respondents/Defendants. Petitioner will amend this  
20 Petition to allege the true names and capacities of Does 1 through 20, inclusive when ascertained.

21 7. Prior to January 1, 2019, California Penal Code section 832.7, subdivision (a) provided  
22 that "peace officer or custodial officer personnel records and records maintained by any state or local  
23 agency pursuant to Section 832.5, or information obtained from those records, are confidential and  
24 shall not be disclosed in any criminal or civil proceedings, except by discovery pursuant to Sections  
25 1043 and 1046 of the Evidence Code."

26 8. California Penal Code section 832.8 provides that, as used in Section 832.7, "personnel  
27 records" includes "any file maintained under that individual's name by his or her employing agency  
28 and containing records relating to any of the following: ... (d) Employee advancement, appraisal, or



1 discipline; (e) Complaints, or investigations of complaints, concerning an event or transaction in which  
2 he or she participated, or which he or she perceived, and pertaining to the manner in which he or she  
3 performed his or her duties.”

4 9. On September 30, 2018, Governor Brown approved Senate Bill 1421 (“SB 1421”)  
5 which amended Penal Code sections 832.7 and 832.8 relating to peace officer personnel records. SB  
6 1421 provided that peace officer or custodial officer personnel records and information concerning the  
7 following categories of incidents shall *not* be confidential, and shall be made available for public  
8 inspection pursuant to the CPRA: a) an incident involving the discharge of a firearm at a person by a  
9 peace officer or custodial officer; b) an incident in which the use of force by a peace officer or  
10 custodial officer against a person resulted in death, or in great bodily injury; c) an incident in which a  
11 sustained finding was made by any law enforcement agency or oversight agency that a peace officer or  
12 custodial officer engaged in sexual assault involving a member of the public; and d) an incident in  
13 which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty  
14 by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of  
15 a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer  
16 or custodial officer, including, but not limited to, any sustained finding of perjury, false statements,  
17 filing false reports, destruction, falsifying, or concealing of evidence. (Attached hereto as **Exhibit A**  
18 and made a part hereof as though fully set forth is a true and correct copy of Chapter 988 of the 2017-  
19 2018 Regular Session, SB 1421.)

20 10. SB 1421 was enacted during the regular legislative session, and not designated as  
21 “urgent.” Accordingly, its amendments were effective January 1, 2019. (Gov. Code § 9600.)

22 11. SB 1421 contains no legislative direction for a retroactive application of the  
23 amendments to Penal Code sections 832.7 and 832.8, including no such direction as to the  
24 amendment’s application to peace officer personnel records reflecting conduct or arising out of  
25 incidents occurring prior to January 1, 2019 – information deemed confidential as a matter of law.

26 12. In a letter dated January 22, 2019, Senior Assistant City Attorney Joshua K. Clendenin  
27 informed Joe Higby, President of the CPA, that “the City intends to apply [SB 1421] as removing the  
28 confidentiality previously associated with many investigat[ion] and sustained police officer personnel



1 records,” and that the four categories of records identified by SB 1421 “whether created in the past or  
2 future, shall no longer be confidential and shall be made available for public inspection.” (Attached  
3 hereto as **Exhibit B** is a true and correct copy of Mr. Clendenin’s January 22, 2019 letter.)

4 13. SB 1421 amended Penal Code section 832.7, effective January 1, 2019, to eliminate the  
5 longstanding statutory confidentiality of specified peace officer personnel records, and the information  
6 contained therein, maintained by public agencies in order to make such records and information  
7 available for public inspection pursuant to the CPRA effective January 1, 2019.

8 14. SB 1421 does not contain any express provision or language requiring retroactivity or  
9 any clear indication that the Legislature intended the statute to operate retroactively so as to be applied  
10 and enforced with respect to peace officer personnel records and information which arose out of  
11 incidents involving peace officer conduct occurring prior to January 1, 2019.

12 15. The amendments constitute a substantial and adverse change to the existing privacy  
13 rights of the Petitioner’s represented peace officers. Pursuant to California Constitution, article I,  
14 section 3, subdivision (b), paragraph (3), any broad construction of statutes pertaining to the right of  
15 access to information of public agencies (such as the CPRA) does *not* supersede the construction of  
16 statutes that protect the constitutional right of privacy, including any statutory procedures governing  
17 discovery or disclosure of information concerning the official performance or professional  
18 qualifications of a peace officer.

19 16. Petitioner’s represented peace officers will suffer irreparable injury and damage by the  
20 retroactive application of SB 1421’s amendments, in that such an application would unlawfully violate  
21 the constitutional and statutory protection of peace officers to the confidentiality of their peace officer  
22 personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019.

23 17. Petitioner has a beneficial interest in Respondents’ compliance with their ministerial  
24 duties not to violate Petitioner’s represented peace officers’ confidentiality rights by applying SB  
25 1421’s amendments retroactively.

26 **SECOND CAUSE OF ACTION – DECLARATORY RELIEF**

27 18. For a Second Cause of Action by Petitioner against the City; Chief; and Does 1 through  
28 17, inclusive, for Declaratory Relief, Petitioner realleges paragraphs 1 through 17 and further alleges.

as follows:

19. An actual and justiciable controversy has arisen and now exists, between Petitioner and Respondents regarding the following: (1) whether Respondents' stated intention to apply SB 1421's amendments to peace officer personnel records and information reflecting specified peace officer conduct occurring prior to January 1, 2019 is a retroactive application and enforcement of SB 1421; (2) whether such application violates the right of confidentiality and privacy of such peace officers to information in their personnel files protected by California Constitution, article 1, section 3, subdivision (b), paragraph (3) and by the pre-existing statutory provisions of Penal Code sections 832.7, 832.8 and Evidence Code sections 1043 and 1045; and (3) whether such retroactive application is contrary to the purpose of any applicable judicial protective orders issued prior to January 1, 2019 during in-camera proceedings conducted pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 to protect the right of privacy of peace officers.

20. Such a judicial determination is necessary and proper in order that the parties may ascertain their respective legal rights and duties where: a) SB 1421 amending Penal Code section 832.7 eliminates the well-established statutory and constitutional confidentiality of specified peace officer and custodial peace officer personnel records and does not contain an express retroactivity provision nor legislative intent to rescind previously conferred privacy rights to peace officers; and, b) Respondents intend to make such peace officer personnel records and information arising prior to January 1, 2019 available for public inspection.

21. There are no effective administrative remedies available to compel the relief sought herein against Respondents.

### **THIRD CAUSE OF ACTION – INJUNCTIVE RELIEF**

22. For a Third Cause of Action by Petitioner against Respondents City; Chief; and Does 1 through 20, inclusive, for Injunctive Relief, Petitioner realleges paragraphs 1 through 21, and further alleges as follows:

23. Unless and until Petitioner's request for injunctive relief, including a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction are granted by this Court restraining and enjoining Respondents from retroactively enforcing or applying SB 1421's



1 amendments to Penal Code sections 832.7 and 832.8, Petitioner's represented employees will suffer  
2 irreparable harm to their statutory and constitutional privacy rights that far outweighs any alleged  
3 detriment to Respondents or the public.

4 24. As a consequence of the exceedingly short ten (10) day time frame for Respondents to  
5 respond to public records requests under Government Code section 6253(c), and Respondents' stated  
6 intend to release personnel records reflecting conduct or incidents occurring prior to January 1, 2019, a  
7 regularly noticed hearing on a preliminary injunction would not provide timely relief to Petitioner's  
8 represented peace officers whose statutory and constitutional privacy rights are imminently  
9 jeopardized. Therefore, a Temporary Restraining Order is appropriate and necessary to maintain the  
10 status quo pending a declaratory adjudication by this Court as to the rights and obligations of the  
11 parties.

12 25. There is no adequate legal remedy to compensate Petitioner's represented peace officers  
13 for the unlawful disclosure of their confidential personnel file information.

14 WHEREFORE, Petitioner CPOA requests the following relief against Respondents City, Chief,  
15 and Does 1-20, and each of them as follows:

16 **FIRST CAUSE OF ACTION**

17 1. Following the hearing upon the Petition, the Court issue a Peremptory Writ of Mandate  
18 directing Respondents and their agents, employees and representatives to refrain from retroactively  
19 enforcing or applying the amendments to California Penal Code sections 832.7 and 832.8 implemented  
20 by SB 1421 in any manner which would result in the disclosure or production of peace officer  
21 personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019;

22 2. Petitioner be awarded attorneys' fees pursuant to Code of Civil Procedure section  
23 1021.5;

24 3. Petitioner be awarded and costs of suit; and,

25 4. For such other and further relief as the Court may deem just and proper.

26 **SECOND CAUSE OF ACTION**

27 1. This Court render a judicial determination that SB 1421's amendments to Penal Code  
28 sections 832.7 and 832.8 cannot legally be enforced or applied by Respondents or their agents,

1 employees and representatives in any manner which would result in the disclosure or production of  
2 peace officers personnel records regarding incidents or reflecting conduct occurring prior to January 1,  
3 2019 that would not have previously been subject to disclosure or production;

4 2. Petitioner be awarded attorneys' fees pursuant to Code of Civil Procedure section  
5 1021.5;

6 3. Petitioner be awarded and costs of suit; and,

7 4. For such other and further relief as the Court may deem just and proper.

8 **THIRD CAUSE OF ACTION**

9 1. This Court issue an Order requiring Respondents, and each of them, to show cause why  
10 a Preliminary Injunction should not issue, pending a judicial determination on the Second Cause of  
11 Action for Declaratory Relief;

12 2. That pending the hearing on the Order to Show Cause, and until this Court otherwise  
13 directs, the Court issue a Temporary Restraining Order prohibiting any retroactive enforcement or  
14 application of SB 1421's amendments by Respondents or their agents, employees and representatives  
15 in any manner which would result in the disclosure or production of peace officer personnel records  
16 and information regarding incidents or reflecting conduct occurring prior to January 1, 2019 that would  
17 not have previously been subject to disclosure or production;

18 3. That following the hearing on the Order to Show Cause, the Court issue a Preliminary  
19 Injunction restraining and enjoining Respondents and their agents, employees and representatives from  
20 retroactively enforcing or applying the amendments to California Penal Code sections 832.7 and 832.8  
21 implemented by SB 1421 in any manner which would result in the disclosure or production of peace  
22 officer personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019  
23 that would not have previously been subject to disclosure or production;

24 4. That following a trial on the merits, the Court issue a Permanent Injunction ordering,  
25 restraining and enjoining Respondents and their agents, employees and representatives from  
26 retroactively enforcing or applying the amendments to California Penal Code sections 832.7 and 832.8  
27 implemented by SB 1421 in any manner which would result in the disclosure or production of peace  
28 officer personnel records regarding incidents or reflecting conduct occurring prior to January 1, 2019



1 that would not have previously been subject to disclosure or production;

2 5. Petitioner be awarded attorneys' fees pursuant to Code of Civil Procedure section 1021.5;

3 6. Petitioner be awarded and costs of suit; and

4 7. For such other and further relief as the Court may deem just and proper.

5 Dated: January 24, 2019

Respectfully Submitted,

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7 **RAINS LUCIA STERN**  
**ST. PHALLE & SILVER, PC**

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9 Zachery A. Lopes  
10 Attorneys for Petitioner/Plaintiff  
11 Concord Police Association  
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### VERIFICATION

I, Joseph Higby, am the duly elected President of the Concord Police Association ("CPA"), Petitioner in this action.

I have read the foregoing VERIFIED PETITION FOR WRIT OF TRADITIONAL MANDATE [CCP § 1085]; COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof. The facts as alleged therein are true to the best of my knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true. I have authorization to verify such facts on behalf of the CPA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 23, 2019, in CONCORD, California.

  
\_\_\_\_\_  
Joseph Higby

1 **INDEX OF EXHIBITS**

2

3 **Exhibit A:** Chapter 988 of the 2017-2018 Regular Session, SB 1421.

4 **Exhibit B:** Mr. Clendenin's January 22, 2019 letter.

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# **EXHIBIT A**

**Senate Bill No. 1421**

**CHAPTER 988**

An act to amend Sections 832.7 and 832.8 of the Penal Code, relating to peace officer records.

[Approved by Governor September 30, 2018. Filed with  
Secretary of State September 30, 2018.]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1421, Skinner. Peace officers: release of records.

The California Public Records Act requires a state or local agency, as defined, to make public records available for inspection, subject to certain exceptions. Existing law requires any peace officer or custodial officer personnel records, as defined, and any records maintained by any state or local agency relating to complaints against peace officers and custodial officers, or any information obtained from these records, to be confidential and prohibits the disclosure of those records in any criminal or civil proceeding, except by discovery. Existing law describes exceptions to this requirement for investigations or proceedings concerning the conduct of peace officers or custodial officers, and for an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

This bill would require, notwithstanding any other law, certain peace officer or custodial officer personnel records and records relating to specified incidents, complaints, and investigations involving peace officers and custodial officers to be made available for public inspection pursuant to the California Public Records Act. The bill would define the scope of disclosable records. The bill would require records disclosed pursuant to this provision to be redacted only to remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace officers and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers, or where there is a specific, particularized reason to believe that disclosure would pose a significant danger to the physical safety of the peace officer, custodial officer, or others. Additionally the bill would authorize redaction where, on the facts of the particular case, the public interest served by nondisclosure clearly outweighs the public interest served by disclosure. The bill would allow the delay of disclosure, as specified, for records relating to an open investigation or court proceeding, subject to certain limitations.



The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) Peace officers help to provide one of our state's most fundamental government services. To empower peace officers to fulfill their mission, the people of California vest them with extraordinary authority — the powers to detain, search, arrest, and use deadly force. Our society depends on peace officers' faithful exercise of that authority. Misuse of that authority can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, as well as significant public unrest.

(b) The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.

SEC. 2. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office.

(b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this definition, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

(2) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

(3) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.



(4) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B) or (C) of paragraph (1), unless it relates to a sustained finding against that officer. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a sustained finding against another officer that is subject to release pursuant to subparagraph (B) or (C) of paragraph (1).

(5) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of complainants and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct and serious use of force by peace officers and custodial officers.

(D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

(6) Notwithstanding paragraph (5), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(7) An agency may withhold a record of an incident described in subparagraph (A) of paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the use of force occurred or until the district attorney determines whether to file criminal charges related to the use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure

of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about use of serious force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule thereto, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in subparagraph (A) of paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the use of force, or allegation of use of force, by a person authorized to initiate an investigation, or 30 days after the close of any criminal investigation related to the peace officer or custodial officer's use of force, whichever is later.

(8) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.



(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

(d) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved.

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or his or her agent or representative.

(f) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(g) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

(h) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

(i) Nothing in this chapter is intended to limit the public's right of access as provided for in *Long Beach Police Officers Association v. City of Long Beach* (2014) 59 Cal.4th 59.

SEC. 3. Section 832.8 of the Penal Code is amended to read:

832.8. As used in Section 832.7, the following words or phrases have the following meanings:

(a) "Personnel records" means any file maintained under that individual's name by his or her employing agency and containing records relating to any of the following:

(1) Personal data, including marital status, family members, educational and employment history, home addresses, or similar information.

(2) Medical history.

(3) Election of employee benefits.

(4) Employee advancement, appraisal, or discipline.

(5) Complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties.

(6) Any other information the disclosure of which would constitute an unwarranted invasion of personal privacy.

(b) "Sustained" means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or department policy.

(c) "Unfounded" means that an investigation clearly establishes that the allegation is not true.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which amends Section 832.7 of the Penal Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

The public has a strong, compelling interest in law enforcement transparency because it is essential to having a just and democratic society.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.



**EXHIBIT B**

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January 22, 2019

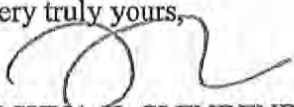
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*Re: Senate Bill 1421 & related Public Records Act requests*

Dear Officer Higby:

In response to the recent effective date of SB 1421 on January 1, 2019 and numerous Public Records Act requests the City has received since that date, the City has been diligently reviewing the changes to the law and carefully considering how to implement those changes. Based on our review, the City intends to apply the law as removing the confidentiality previously associated with many investigate and sustained police officer personnel records. Specifically, the following records, whether created in the past or future, shall no longer be confidential and shall be made available for public inspection: records relating to the report, investigation, or findings of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer, or an incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury; any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public; any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

Very truly yours,

  
JOSHUA K. CLENDENIN  
Senior Assistant City Attorney

cc: Rocky Lucia ([rlucia@rlslawyers.com](mailto:rlucia@rlslawyers.com))